**PP**

**v.**

**DATO' SERI ANWAR IBRAHIM**

HIGH COURT MALAYA, KUALA LUMPUR
AUGUSTINE PAUL J
[CRIMINAL TRIAL NOS: 45-47-98, 45-48-98, 45-49-98, 45-50-98, 45-51-98, 45-52-98, 45-53-98, 45-54-98]
21 OCTOBER 1998
[1998] CLJ JT(12)

***CRIMINAL PROCEDURE:*** *Bail - Granting of - Non-bailable offences - Applicable principles - Detention of accused under Internal Security Act 1960 - Whether a bar to bail - Accused's exalted position in society - Whether a sufficient ground for granting bail - Possibility of witnesses being tampered with - Whether a good ground for refusing bail - Penal Code, s. 377B - Emergency (Essential Powers) Ordinance No. 22 1970, s. 2(1) - Criminal Procedure Code, ss. 387, 388, 389*

The accused, Dato' Seri Anwar Ibrahim, a former Deputy Prime Minister and Minister of Finance of Malaysia, was charged with five counts of corrupt practices under s. 2(1) of the Emergency (Essential Powers) Ordinance No 22 of 1970 ('the Ordinance') and five offences under s. 377B of the Penal Code.

The accused claimed trial to all the ten charges. The prosecution then applied for the first four charges under the Ordinance to be tried together in accordance with s. 165 of the Criminal Procedure Code ('the CPC'). As the defence did not object to this, the application was allowed.

In the course of the proceedings, the accused made an oral application to be released on bail in respect of all the ten charges. The grounds advanced in support of the application were: (i) that the detention of the accused under the Internal Security Act 1960 ('the ISA') was no bar to his application for bail; (ii) that the good social status of the accused was a reason for bail to be granted; (iii) that the poor health of the accused required constant medical attention; (iv) that there was no danger of the accused absconding; (v) that there was no danger of the accused tampering with the prosecution's witnesses; (vi) that bail would facilitate the preparation of the accused's defence; and (vii) that there was a strong likelihood of the accused being in detention or prison for a long period as the charges preferred against him were many and serious. The defence concluded that the accused was prepared to have

conditions attached to his bail and that if they were breached the bail could be revoked.

**Held:**

**[1]** The granting of bail to the accused in the face of his detention under the ISA is not an exercise in futility. The accused can be released from detention under the ISA at any time by the police, in which event he would continue to be remanded till he moves the court for bail. His application for bail, hence, can be considered on the merits notwithstanding that he is presently subject to detention under the ISA.

**[2]** The law relating to bail is governed by ss. 387, 388 and 389 of the CPC. Section 387 speaks of bailable offences whereby an accused is entitled to bail as a matter of right. Under ss. 388 and 389, which respectively deal with non-bailable offences and the High Court's power to admit a person to bail, however, bail can be granted at the discretion of the court.

**[3]** By virtue of the First Schedule to the CPC, the offences of sodomy and corrupt practices are non-bailable offences. That being so, bail in respect of the offences is at the discretion of the court and not a matter of right. In any event, the accused may also be admitted to bail pursuant to s. 389 of the CPC.

**[4]** There was no material placed before the court to show that the accused would not get appropriate medical treatment while in detention. In the circumstances, there is no merit in the argument that bail ought to be granted on medical grounds. On the facts, there is also no merit in the contention that the accused would languish in detention unnecessarily, as an early hearing date has been set by the court.

**[5]** The accused's respectable social status, per se, is not a sufficient ground for granting bail. The accused was charged with offences which are serious in nature. Indeed, the charges under the Ordinace strike at the very core of the administration of justice. Clearly, offences of this nature will affect the wider interest of the community at large, particularly in the light of the exalted position occupied by the accused. The social status of the accused, in the circumstances, cannot operate in his favour.

**[6]** An allegation of tampering with witnesses is a matter of serious concern in bail applications. In this case, police reports have been made by witnesses who allegedly had been tampered with and no challenge has been mounted against the reports. A police report has also been made alleging that the accused is likely to set up false evidence in support of

his defence, and this report, likewise, has also not been challenged. These apart, it was also evident that the defence has not addressed itself to the vulnerability of the lesser standing witnesses to tampering. In the circumstances, the court can only agree with the contention of the prosecution that the witnesses may be tampered with if the accused is released on bail. This is a cogent reason for refusing bail.

**[7]** Bearing in mind the findings aforesaid, the question of releasing the accused on bail with conditions attached does not at all arise.

*[Application dismissed. Bail refused.]*

**Cases referred to:**

*Babu Singh v. State of UP [1978] Cr LJ 657* ***(refd)***
*Bakshi Sardari Lal v. Supt, Tehar Central Jail [1968] Cr LJ 675* ***(refd)***
*Che Su Daud v. PP [1978] 2 MLJ 162* ***(refd)***
*Chinnakarappan v. PP [1962] MLJ 234* ***(refd)***
*Gurbaksh Singh v. State of Punjab AIR [1980] SC 1632* ***(refd)***
*Hussey v. The State [1992] LRC (Crim) 62* ***(refd)***
*Juglekor v. Emperor ILR 54 All 115* ***(refd)***
*Lim Kiap Khee v. PP [1988] 1 MLJ 198* ***(refd)***
*Loy Chin Hei v. PP [1981] 1 CLJ 177* ***(foll)***
*Madike v. The State [1992] LRC (Crim) 144* ***(foll)***
*Nabachandra Singh v. Manipur Administration AIR [1964] Mani 39* ***(refd)***
*PP v. Dato' Mat [1991] 2 CLJ 1112* ***(refd)***
*PP v. Latchemy [1967] MLJ 79* ***(refd)***
*PP v. Mat Zain [1948-49] MLJ Supp 142* ***(refd)***
*PP v. Wee Swee Siang [1948] MLJ 114* ***(refd)***
*PP v. Zulkifflee Hassan [1990] 2 CLJ 1* ***(refd)***
*R v. Chan Choon Weng & Ors [1956] MLJ 81* ***(refd)***
*R v. Lim Kwang Seng & Ors [1956] MLJ 178* ***(refd)***
*R v. Ooi Ah Kow [1952] MLJ 95* ***(refd)***
*Raja Narendralal Khan v. Emperor ILR 36 Cal 166* ***(refd)***
*Ratilall Bhanji Mithani v. Assistant Collector of Customs AIR [1967] SC 1939* ***(refd)***
*Re KS Menon [1949] MLJ 49* ***(refd)***
*Sagri Bhagat & Ors v. State of Bihar AIR [1951] Pat 497* ***(refd)***
*Sangappa v. State of Karnataka [1984] Cr LJ 1367* ***(refd)***
*Sebastian v. PP [1968] 2 MLJ 214* ***(refd)***
*Shahzad Hossain Khan v. Ishtaq Hasam Khan AIR [1987] SC 1613* ***(refd)***
*Shaikh Karim & Others v. Emperor AIR [1926] Nag 279* ***(refd)***
*State v. Jaspal Singh Gill AIR [1984] SC 1503* ***(refd)***
*State v. Mehboob Ali Khan AIR [1956] Bom 548* ***(refd)***
*State v. P Sugathan [1988] Cr LJ 1036* ***(refd)***
*Sulaiman Kadir v. PP [1976] 2 MLJ 37* ***(refd)***
*Yusof Mohammed v. PP [1995] 3 MLJ 66* ***(refd)***

**Legislation referred to:**
Criminal Procedure Code, ss. 2, 165, 319(ii), 387, 388, 389
Emergency (Essential Powers) Ordinance No 22 of 1970, ss. 2(1), 9(1)
Penal Code, s. 377B

**Other source referred to:**
*Bail: Law and Practice*, MR Mallick, 2nd edn, pp 189, 193, 249

*For the prosecution - Abdul Gani Patail (Azahar Mohamed, Mohd Yusof Hj Zainal Abidin & Stanley C Augustin with him)*
*For the defence - Raja Aziz Addruse (Hj Sulaiman Abdullah, Christopher Fernando, Gurbachan Singh Pannu, Zainur Zakaria, Pawan Chik Marican, Kamar Ainiah Kamaruzaman & Sankara N Nair with him); M/s Raja Aziz Addruse*

*Reported by WA Sharif*

## JUDGMENT

**Augustine Paul J:**

Dato' Seri Anwar bin Ibrahim (hereafter referred to as "the accused"), the former Deputy Prime Minister and Minister of Finance, Malaysia was produced before me on 5 October 1998 charged with five counts of sodomy under s. 377B of the Penal Code and five counts of corrupt practices under s. 2(1) of the Emergency (Essential Powers) Ordinance No. 22 of 1970 (hereafter referred to as "Ordinance No. 22"). The ten charges read as follows:

***First Charge***

> Bahawa kamu, dari 12 haribulan Ogos 1997 hingga 18 haribulan Ogos 1997, di Kediaman Rasmi Timbalan Perdana Menteri, No. 47, Jalan Damansara di dalam Wilayah Persekutuan Kuala Lumpur, semasa menjadi seorang anggota pentadbiran, iaitu, menjawat jawatan Timbalan Perdana Menteri dan Menteri Kewangan telah melakukan perbuatan rasuah di mana kamu telah:
>
> > mengarahkan Dato' Mohd. Said bin Awang, Pengarah Cawangan Khas dan Amir bin Junus, Timbalan Pengarah Cawangan Khas II, Polis Di Raja Malaysia memperolehi pengakuan bertulis daripada Azizan bin Abu Bakar bagi menafikan salah laku seks dan liwat yang dilakukan oleh kamu dengan tujuan melindungi diri kamu daripada sebarang tindakan atau prosiding yang bersifat jenayah, dan akibatnya Azizan bin Abu Bakar telah memberi pengakuan bertulis bertarikh 18hb Ogos 1997 kepada Perdana Menteri seperti yang diarahkan,
>
> dan oleh yang demikian kamu telah melakukan satu kesalahan yang boleh dihukum di bawah seksyen 2(1) Ordinan No. 22 (Kuasa-Kuasa Perlu) Dharurat, 1970.

***Second Charge***

Bahawa kamu, pada 27 haribulan Ogos 1997, di Kediaman Rasmi Timbalan Perdana Menteri, No. 47, Jalan Damansara, di dalam Wilayah Persekutuan Kuala Lumpur, semasa menjadi seorang anggota pentadbiran, iaitu, menjawat jawatan Timbalan Perdana Menteri dan Menteri Kewangan telah melakukan perbuatan rasuah di mana kamu telah:-

> mengarahkan Dato' Mohd. Said bin Awang, Pengarah Cawangan Khas dan Amir bin Junus, Timbalan Pengarah Cawangan Khas II, Polis Di Raja Malaysia menggesa Azizan bin Abu Bakar supaya memberi kenyataan umum bertulis bagi menafikan salah laku seks dan liwat yang dilakukan oleh kamu dengan tujuan melindungi diri kamu daripada sebarang tindakan atau prosiding yang bersifat jenayah dan akibatnya Azizan bin Abu Bakar telah memberikan kenyataan umum bertulis seperti mana yang diarahkan,

dan oleh yang demikian kamu telah melakukan satu kesalahan yang boleh dihukum di bawah seksyen 2(1) Ordinan No. 22 (Kuasa-Kuasa Perlu) Dharurat, 1970.

***Third Charge***

Bahawa kamu pada 12 haribulan Ogos 1997 hingga 18 haribulan Ogos 1997, di Kediaman Rasmi Timbalan Perdana Menteri, No. 47, Jalan Damansara, di dalam Wilayah Persekutuan Kuala Lumpur, semasa menjadi seorang anggota pentadbiran, iaitu, menjawat jawatan Timbalan Perdana Menteri dan Menteri Kewangan telah melakukan perbuatan rasuah di mana kamu telah:-

> mengarahkan Dato' Mohd. Said bin Awang, Pengarah Cawangan Khas dan Amir bin Junus, Timbalan Pengarah Cawangan Khas II, Polis Di Raja Malaysia memperolehi pengakuan bertulis daripada Ummi Hafilda bt. Ali bagi menafikan salah laku seks dan liwat yang dilakukan oleh kamu dengan tujuan melindungi diri kamu daripada sebarang tindakan atau prosiding bersifat jenayah dan akibatnya Ummi Hafilda bt. Ali telah memberi pengakuan bertulis bertarikh 18hb Ogos 1997 kepada Perdana Menteri sepertimana yang diarahkan,

dan oleh yang demikian kamu telah melakukan satu kesalahan yang boleh dihukum di bawah seksyen 2(1) Ordinan No. 22 (Kuasa-Kuasa Perlu) Dharurat, 1970.

***Fourth Charge***

Bahawa kamu pada 27 haribulan Ogos 1997, di Kediaman Rasmi Timbalan Perdana Menteri No. 47, Jalan Damansara, di dalam Wilayah Persekutuan Kuala Lumpur, semasa menjadi seorang anggota pentadbiran, iaitu, menjawat jawatan Timbalan Perdana Menteri dan Menteri Kewangan telah melakukan perbuatan rasuah di mana kamu telah:-

mengarahkan Dato' Mohd. Said bin Awang, Pengarah Cawangan Khas dan Amir bin Junus, Timbalan Pengarah Cawangan Khas II, Polis Di Raja Malaysia menggesa Ummi Hafilda bt. Ali supaya memberi kenyataan umum bertulis bagi menafikan salah laku seks dan liwat yang dilakukan oleh kamu dengan tujuan melindungi diri kamu daripada sebarang tindakan atau prosiding bersifat jenayah dan akibatnya Ummi Hafilda bt. Ali telah memberikan kenyataan umum bertulis bertarikh 29 haribulan Ogos 1997 seperti mana yang diarahkan,

dan oleh yang demikian kamu telah melakukan satu kesalahan yang boleh dihukum di bawah seksyen 2(1) Ordinance No. 22 (Kuasa-Kuasa Perlu) Dharurat, 1970.

***Fifth Charge***

Bahawa kamu, pada 3hb Disember 1992, antara 4.50 petang dan 5.50 petang, di bilik No. 758 di Hotel PJ Hilton, Petaling Jaya, dalam Negeri Selangor Darul Ehsan telah dengan sengaja melakukan persetubuhan dengan bertentangan dengan aturan tabii dengan Mior Abdul Razak bin Yahya dengan memasukkan zakar kamu ke dalam duburnya dan oleh yang demikian kamu telah melakukan satu kesalahan yang boleh dihukum di bawah Seksyen 377B Kanun Keseksaan.

***Sixth Charge***

Bahawa kamu pada 24.5.1995 lebih kurang jam 5.30 petang, di Pejabat Menteri Kewangan, di Kementerian Kewangan Jalan Duta, Kuala Lumpur di dalam Wilayah Persekutuan, semasa menjadi seorang anggota pentadbiran, iaitu, menjawat jawatan Timbalan Perdana Menteri dan Menteri Kewangan telah melakukan perbuatan rasuah berkaitan dengan siasatan Badan Pencegah Rasuah ke atas Setiausaha Sulit kamu, Encik Mohd Azmin bin Ali, yang disyaki menerima rasuah sehingga dia telah mengumpulkan harta yang tidak munasabah berbanding dengan pendapatannya, iaitu kamu telah:

a) campurtangan dalam siasatan tersebut, dan

b) mempengaruhi Dato' Shafee bin Yahya Ketua Pengarah Badan Pencegah Rasuah untuk menutup siasatan kes tersebut bertentangan dengan prosedur siasatan Badan Pencegah Rasuah tanpa merujuk kepada Pendakwa Raya;

dan dengan perbuatan kamu itu Encik Mohd. Azmin bin Ali telah dilindungi daripada tindakan atau prosiding yang bersifat jenayah dan oleh yang demikian kamu telah melakukan satu kesalahan yang boleh dihukum di bawah Seksyen 2(1) Ordinan No. 22 (Kuasa-Kuasa Perlu) Dharurat, 1970.

***Seventh Charge***

Bahawa kamu, pada satu malam dalam bulan April 1994 di No. 8, Jalan Setia Murni 1, Bukit Damansara, dalam Wilayah Persekutuan Kuala Lumpur telah dengan sengaja melakukan persetubuhan yang bertentangan dengan aturan tabii dengan Hairany bin Mohd. Naffis dengan memasukkan zakar kamu ke dalam duburnya dan oleh yang demikian kamu telah melakukan satu kesalahan yang boleh dihukum di bawah Seksyen 377B Kanun Keseksaan.

***Eighth Charge***

Bahawa kamu, pada satu malam dalam bulan April 1998, di Kediaman Rasmi Timbalan Perdana Menteri di No. 47, Jalan Damansara, dalam Wilayah Persekutuan Kuala Lumpur telah dengan sengaja melakukan pesetubuhan dengan bertentangan dengan aturan tabii dengan Sukma Darmawan Sasmitaat Madja dengan memasukkan zakar kamu ke dalam duburnya dan oleh yang demikian kamu telah melakukan satu kesalahan yang boleh dihukum di bawah Seksyen 377B Kanun Keseksaan.

***Ninth Charge***

Bahawa kamu, pada satu malam dalam bulan May 1994 lebih kurang jam 7.45, di Unit No. 10-7-2, Tivoli Villa, Jalan Medang Tanduk, Bangsar dalam Wilayah Persekutuan Kuala Lumpur telah dengan sengaja melakukan persetubuhan yang bertentangan dengan aturan tabii dengan Azizan bin Abu Bakar dengan memasukkan zakar kamu ke dalam duburnya dan oleh yang demikian kamu telah melakukan satu kesalahan yang boleh dihukum di bawah Seksyen 377B Kanun Keseksaan.

***Tenth Charge***

Bahawa kamu, pada satu malam dalam bulan Mac 1993 di No. 8, Jalan Setia Murni 1, Bukit Damansara, dalam Wilayah Persekutuan Kuala Lumpur telah dengan sengaja melakukan persetubuhan yang bertentangan dengan aturan tabii dengan Munawar Ahmad Aness dengan memasukkan zakar kamu ke dalam duburnya dan oleh yang demikian kamu telah melakukan satu kesalahan yang boleh dihukum di bawah Seksyen 377B Kanun Keseksaan.

The accused claimed trial to all the charges. The prosecution applied for the first four charges to be tried together in accordance with s. 165 of the Criminal Procedure Code (hereafter referred to as "the CPC"). The defence did not object. I allowed the application.

In the course of the proceedings the defence made an oral application for the accused to be released on bail in respect of all the ten charges. The defence argument in support of the application was led by Mr. Christopher Fernando (hereafter referred to as "the learned counsel") while the reply by the prosecution was addressed by Dato' Abdul Gani Patail (hereafter referred to as "the learned Deputy"). The grounds advanced by the defence in support of its application and the reply by the prosecution can be classified under the following headings:

***(a) Detention Of The Accused Under The Internal Security Act 1960 (Hereafter Referred To As "The ISA") Is No Bar To Bail***

Learned counsel said that his application may be countered by the argument that bail must not be allowed as the accused has been detained under the ISA. He said that both the matters must be treated as separate and distinct issues. He added that if bail is not granted the accused may find himself in an anomalous situation if no detention order is made against him at the end of the 60-day period. In his reply the learned deputy said that as the accused has been detained under the ISA any bail granted would be an exercise in futility as he would still not be released by virtue of the continuance of his detention. He added that the prosecution undertakes to inform the court and the defence the moment the accused is released so that an application for bail could be made promptly.

***(b) Social Status Of The Accused***

Learned counsel said that until three weeks ago the accused was the Deputy Prime Minister of Malaysia. He had held high public office for the last 16 years. There was also one occasion when he acted as the Prime Minister for a period of two months. He is a respectable person not only in Malaysia but is also held in high esteem internationally and has a clean record.

***(c) Health Condition Of The Accused***

Learned counsel said that the accused is in poor health and requires constant medical attention and produced a letter from the University Hospital describing the accused's medical condition. The report says that the accused is suffering from reflux oesophagitis. Learned counsel added that this is a chronic condition and requires medicine and meals at regular times. He added that the accused cannot be put to physical stress as this could invite serious complications to his pre-existing conditions. He said that the conditions while in custody cannot measure up to these requirements. In his reply the learned deputy said that the medical report refers to the examination of a pre-existing condition in 1990 and 1995. He added that doctors are allowed to see the accused and that he has been observed for 24 hours.

***(d) Danger Of Absconding***

It was the defence contention that the accused has his roots in Malaysia and there is no danger of him absconding or leaving the jurisdiction.

***(e) Danger Of Witnesses Being Tampered With***

Learned counsel said that the accused will in no way obstruct the prosecution. The alleged victims in respect of the four charges are senior police officers and the director general of the Anti-Corruption Agency. He said that it is unthinkable that the accused who is now facing these charges will have any opportunity to exert any influence on or tamper with them bearing in mind the massive security arrangements that have been mounted. He said that there is no likelihood of the accused setting up false evidence in support of his defence. The learned deputy said that there is no guarantee that if the accused is released on bail he will not obstruct the prosecution in any way. He said that there is a real danger of witnesses being tampered with. He said that seven witnesses have lodged police reports saying that they have been tampered with. These persons are material witnesses for the prosecution and two of them are relevant witnesses for the first to the fourth charges. He added that the accused is likely to set up false evidence in support of his defence and a police report has been made on this issue. He said that the first to the fourth charges themselves relate to preparation of false documents. In his reply learned counsel said that the police reports referred to by the prosecution are not against the accused.

***(f) Opportunity For The Accused To Prepare His Defence***

Learned counsel said that the release of the accused on bail would facilitate the preparation of his defence. It will be difficult to take instructions from the accused if he is in detention.

***(g) Long Period Of Detention***

Learned counsel said that ten charges of a serious nature have been preferred against the accused. There is a strong likelihood that these cases would stretch over a long period of time before they are concluded. He said that it is not in the best interests of anyone to allow the accused to languish in detention pending the disposal of these cases. The learned deputy said that the question of the accused languishing in prison does not arise as early dates have been fixed for the hearing of the cases.

***(h) Bail With Conditions***

Learned counsel concluded by saying that if the court is minded to grant bail the accused is prepared to have conditions attached to the bail and that if he breaches the conditions the bail may be revoked.

Before embarking on a consideration of the merits of the application it is first necessary to advert to the law relating to bail. This area of the law is governed by ss. 387, 388 and 389 of the CPC. Section 387 of the CPC deals with bailable offences. Where a person is charged with a bailable offence he is entitled to be released on bail as of right (see *PP v. Dato' Mat* [1991] 2 MLJ 186; *Sebastian v. PP* [1968] 2 MLJ 214; *R v. Lim Kwang Seng & Ors* [1956] MLJ 178; *Bakshi Sardari Lal v. Supt, Tehar Central Jail* [1968] Cr LJ 675; *Ratilall Bhanji Mithani v. Assistant Collector of Customs* AIR 1967 SC 1939). Section 388 of the CPC deals with non-bailable offences. In the case of such offences bail is at the discretion of the court (see *Lim Kiap Khee v. PP* [1988] 1 MLJ 198). Section 389 of the CPC empowers the High Court to, *inter alia*, direct that any person be admitted to bail. This power is also exercisable at the discretion of the court (see *PP v. Zulkifflee bin Hassan* [1990] 2 MLJ 215). The discretion to grant or not to grant bail must, however, be exercised judicially (see *Re KS Menon* [1949] MLJ 49). As Das J observed in *Sagri Bhagat & Ors v. State of Bihar* AIR 1951 Pat 497 the difficulty in laying down a formula of universal application in exercising this discretion is that the consideration will vary from case to case and it cannot be confined within the framework of a cut and dry formula. In *PP v. Wee Swee Siang* [1948] MLJ 114 Callow J set out the following factors which the court may take into consideration when granting or refusing bail:

(1) Whether there was or was not reasonable ground for believing the accused guilty of the offence.

(2) The nature and gravity of the offence charged.

(3) The severity and degree of punishment that might follow.

(4) The danger of the accused absconding if released on bail.

(5) His character, means and standing.

(6) The danger of the offence being continued or repeated.

(7) The danger of the witnesses being tampered with.

(8) Opportunity to the accused to prepare the defence.

(9) The long period of detention of the accused and probability of further period of delay.

The list is not exhaustive (see *Che Su binti Daud v. PP* [1978] 2 MLJ 162). Thus in *Yusof bin Mohammed v. PP* [1995] 3 MLJ 66 Malik Ishak J added the larger interest of the public and the country as a whole to the list of factors to be considered in making a decision on an application for bail (see also *State v. Jaspal Singh Gill* AIR 1984 SC 1503). It is the net result of all the considerations for and against the accused which must ultimately decide the matter (see *Che Su binti Daud v. PP* [1978] 2 MLJ 162). It must be observed that the jurisdiction must be exercised properly because it will affect the doctrine of presumption of innocence of the accused which underlies a criminal trial. However, as *Bail: Law and Practice* by MR Mallick 2nd Edn says at p. 193:

> But the fact that the accused is presumed to be innocent till the guilt is proved against him beyond all reasonable doubt is not a relevant consideration for grant of bail. Pre-trial detention in itself is not an evil, nor opposed to the basic presumption of innocence.

In support the learned author referred to *State v. P. Sugathan* [1988] Cr LJ 1036 where CS Nair J said:

> In some quarters, a feeling seems to exist that the object of criminal law is to protect the rights of the accused and that the criminal justice system is envisioned as a sentinel of the rights of the accused. It is not so. The law is the sentinel of rights, of the society and of the individual. The rights of the criminal defendant will be as zealously guarded, as the cause of public justice. Pre-trial detention in itself is not an evil, nor opposed to the basic presumption of innocence. Pronouncements of the Supreme Court have recognised the importance of effective investigation, as much as the rights of the accused.

There is no mandatory requirement in s. 388 of the CPC that an application for bail must be made in writing. A court can consider the prayer for bail even if made by the accused or his counsel orally (see *Babu Singh v. State of UP* [1978] Cr LJ 657; *Nabachandra Singh v. Manipur Administration* AIR [1964] Mani 39).

In the light of the applicable law it is first necessary to determine whether the offences with which the accused has been charged are bailable or non-bailable in order to decide whether he is entitled to bail as of right or at the discretion of the court. Section 2 of the CPC provides that a "bailable offence" means an offence shown as bailable in the First Schedule to the CPC or which is made bailable by any other law for the time being in force and "non-bailable offence" means any other offence. The offences of sodomy preferred against the accused are shown as non-bailable in the First Schedule to the CPC. Bail for these offences is therefore at the discretion of the Court. With regard to the offences against the accused for corrupt practices under s. 2(1) of

Ordinance No. 22 the First Schedule to the CPC provides that offences against laws other than the Penal Code are not bailable if punishable with imprisonment for three years and upwards. In this case the offences are punishable with imprisonment of 14 years and would therefore be non-bailable in accordance with the First Schedule to the CPC. However, specific provision has been made for bail under s. 9(1) of Ordinance No. 22 in respect of offences under it. It empowers a person accused of an offence under that ordinance to be remanded in custody or to be released on bail. I interpolate to say that there is no conflict between s. 9(1) of Ordinance No. 22 which empowers bail to be allowed for offences under that ordinance and the First Schedule to the CPC pursuant to which offences under s. 2(1) of Ordinance No. 22 are not bailable by virtue of the penalty prescribed therein. In saying this I adopt the view expressed by Wan Yahya J (as he then was) in *Loy Chin Hei v. PP* [1982] 1 MLJ 31 that where provision is made in a later legislation with regard to bail, then the later provision will prevail over the provisions of the CPC. As Ordinance No. 22 provides for an option of a remand order *in lieu* of bail it is my view that bail in the case of offences under the ordinance is at the discretion of the court and is not a matter of right. In any event the accused may be admitted to bail at the discretion of the High Court pursuant to s. 389 of the CPC. In the premises the right of the accused to bail under both the category of offences that he has been charged with is at the discretion of the court.

I shall now consider the merits of the application made by the accused against the background of the law that I have adverted to.

***(a) Detention Of The Accused Under The ISA***

I agree with the submission of learned counsel that the detention of the accused under the ISA and the bail application are separate and distinct issues. In my view the granting of bail to the accused in the face of his detention under the ISA is not an exercise in futility as contended by the prosecution. The accused can be released from detention under the ISA at any time by the police. In that event he would continue to be in remand till he moves the court for bail. That may take a few days and, to my mind, is an infringement of his right to liberty. An accused person should not be kept in custody for a moment longer than is necessary (see *Sulaiman bin Kadir v. PP* [1976] 2 MLJ 37). I would therefore hold that the application for bail by the accused can be considered on its merits notwithstanding the fact that he is subject to detention in respect of another matter. In so holding I derive support from the judgment of the Nigerian Court of Appeal in *Madike v. The State* [1992] LRC (Crim) 144 where Kolawole JCA said at p. 148:

> The Vice-President of the country may decide tomorrow to release the applicant from detention; if bail has been refused mainly on the ground that the applicant is under detention, would she have to bring a fresh application for bail if the order of detention is revoked? My view is that the application for bail must be considered on its own merit without reference to the detention of the applicant, which detention order may be revoked before the appeal of the applicant is heard and determined. … … …
>
> Indeed the question of bail has nothing to do with the detention order because both the detention order and the conviction of the applicant emanated from two independent authorities. Each of the authorities exercised their functions independently and under two different and unrelated laws.

I must point out that if the accused is granted bail the bond that has been executed shall not affect his detention. This is provided by s. 319(ii) of the CPC which reads as follows:

> (ii) Nothing in this section, section 387 or section 388 shall be deemed to require the release of any person liable to be detained for some matters other than that in respect of which the bond was executed.

I find further support for the view that I have expressed in the language of this sub-section as it pre-supposes the right of a person to bail even though he is subject to a detention order.

***(b) Social Status Of The Accused***

There can be no dispute that the accused enjoyed an elevated status both at national and international level. It has been held that the social position or status of an accused person *per se* is not a sufficient ground for granting or rejecting an application for bail (see *Shaikh Karim & Others v. Emperor* AIR [1926] Nag 279; *State v. Mehboob Ali Khan* AIR [1956] Bom 548). But in matters relating to grant of bail, the character, behaviour, means and standing of the accused may assume relevance along with other circumstances to consider his release on bail (see *Juglekor v. Emperor* ILR 54 All 115 (FB); *Raja Narendralal Khan v. Emperor* ILR 36 Cal 166). The gravity of the offence is also to be considered in granting or refusing bail, even if the social position or status of the accused is very high in the society (see *Bail: Law and Practice* by MR Mallick 2nd Edn p. 249). Thus this ground can be considered in favour of the accused only if the other factors are in support of his application.

***(c) Health Condition Of The Accused***

I agree that this is an important ground to be considered in making a ruling on the application before me. However, bail on medical ground should not be granted by the court unless it is satisfied that the illness is such as would not be properly treated while the accused is under detention (see *Bail: Law and Practice* by MR Mallick 2nd Edn, p. 189). Where proper treatment is available in the place of detention bail cannot be granted in respect of the illness (see *Sangappa v. State of Karnataka* [1984] Cr LJ 1367). Learned counsel merely said that the accused requires medicine and meals at regular intervals because of his medical condition; that he cannot be put to physical stress and that the conditions while in custody cannot measure up to these requirements. It will therefore be observed that learned counsel has only submitted on the medical requirements of the accused followed by a general statement that the condition while in custody will not measure up to these requirements. He did not place any material on record to show that the medical condition of the accused is such as would not be properly treated while in detention. Neither did he say that the accused is not receiving the required treatment. On the other hand the prosecution said that doctors are allowed to see the accused and that he has been observed for 24 hours. This was not challenged by the defence. I therefore hold that this ground has no merits.

***(d) Danger Of Absconding***

The submission of the defence that there is no danger of the accused absconding or leaving the jurisdiction was not countered by the prosecution. I therefore accept the contention of the defence. This is an important factor to be considered in favour of the accused. It has been held by the Indian Supreme Court that of all the factors to be considered in assessing a bail application the most important considerations are the likelihood of the accused absconding or the danger of tampering with evidence (*Gurbaksh Singh v. State of Punjab* AIR [1980] SC 1632). However, this factor must be considered in the light of the other features of the case.

***(e) Danger Of Witnesses Being Tampered With***

There is an onus on the accused to show, on a balance of probabilities, that his admission to bail would not prejudice the interests of justice (see *Hussey v. The State* [1992] LRC (Crim) 62). The defence merely contended that there is no possibility of the accused tampering with the witnesses for the prosecution. It must be observed that the argument of the defence on this issue was confined to the difficulty of tampering with the high ranking police officers and the director general of the Anti-Corruption Agency referred to in the charges. This overlooks the fact that they are not the only witnesses in

the ten charges in respect of the bail application. The charges themselves indicate that there are other witnesses of lesser standing. The defence has not addressed its mind to the vulnerability of this category of witnesses. The prosecution, on the other hand, alleged that there is a real danger of witnesses being tampered with and tendered some police reports made by potential witnesses who had been tampered with. The defence did not challenge these reports but merely said that the reports are not personally against the accused. An allegation of tampering with witnesses is a matter of serious concern in bail applications. In this regard I refer to *PP v. Wee Swee Siang* [1948] MLJ 114 where Callow J said at p. 115:

> On the other hand the learned Deputy Public Prosecutor spoke of the likelihood of interference with prosecution witnesses, and that is a strong reason. At p. 969 of *Sohoni's* Code of Criminal Procedure it states –
>
> > Any allegation that the accused is tampering or attempting to tamper with evidence would be a cogent ground for refusing bail.

In my opinion the fact that the reports lodged are not against the accused personally is not relevant. What is material is the fact that potential witnesses for the prosecution may be tampered with. This is supported by the reports that have been lodged. Such tampering is against the process of justice and is for the benefit of the accused. To that extent the persons against whom the reports have been lodged acted on behalf of the accused with or without his knowledge. It has been held that where there was tampering with evidence on behalf of an accused person in a serious case bail should not have been granted (see *Shahzad Hossain Khan v. Ishtaq Hasam Khan* AIR [1987] SC 1613). It will definitely have a bearing on the outcome of the case even if the accused was not directly involved in such activities. In any event the allegation by the prosecution that the accused is likely to set up false evidence in support of his defence and that a police report has been made on this issue was not challenged by the defence. The release of the accused on bail in these circumstances may aggravate the danger of witnesses being tampered with. This is particularly significant in the light of the seriousness of all and the nature of some of the charges preferred against the accused. The charges under s. 2(1) of Ordinance No. 22 themselves have a strong bearing on the allegation of tampering made by the prosecution though the truth of the charges can be determined only at the end of the trial. I must add that the fact that a person is charged with an offence may on its own be taken into consideration to reflect its gravity in an application for bail (see *R v. Ooi Ah Kow* [1952] MLJ 95; *R v. Chan Choon Weng & Ors* [1956] MLJ 81; *PP v. Latchemy* [1967] MLJ 79); *Chinnakarappan v. PP* [1962] MLJ 234). I am therefore satisfied that the likelihood of witnesses being tampered with is a cogent reason for the accused not to be released on bail.

***(f) Opportunity For The Accused To Prepare His Defence***

As I had made an order allowing three of the accused's counsel to have access to him at any one time for the purpose of obtaining instructions this ground does not have any merit. As a matter of fact I invited the defence to notify me if there was any breach in respect of the order for access that I had made.

***(g) Long Period Of Detention***

I agree with the submission of the prosecution that the question of the accused languishing in prison does not arise as early dates have been fixed for the hearing.

***(h) Bail With Conditions***

The submission of the defence that bail may be granted with conditions attached will only arise for consideration, if in the first place, the court is amenable to grant bail as conditions attached to bail are complementary and concomitant to the grant of bail. In saying this I find support in the (then) Supreme Court judgment in *PP v. Dato' Mat* [1991] 2 MLJ 186 where Wan Yahya J (as he then was) said at p. 188:

> Such condition therefore, to our mind, is not the principal but only a complementary security to be applied concomitantly with the amount prescribed in the bail bond. Such conditions in the bail bond would have a persuasive effect of reducing a large amount of bail which would have been otherwise required by the Court. … … …
>
> The amount of money in the bail bond and not the condition form the prerequisite to the release of an arrested person on bail.

In the premises I was satisfied that the argument advanced by the defence in support of its application was without merit. No material was placed before me to show that the accused will not get appropriate medical treatment while in detention. The early date for hearing that has been given will ensure that the accused does not languish in detention unnecessarily. I was satisfied that sufficient steps had been taken to ensure that the accused has the necessary opportunities to defend himself. The prosecution's submission that witnesses may be tampered with if the accused is released on bail has merit. This finding neutralises the fact that the accused will not abscond if released on bail. On the authority of *PP v. Mat Zain* [1948-49] MLJ Supp 142 I also took into account the gravity of the offences with which the accused has been charged. They are of a serious nature carrying stiff penalties. The charges against the accused under Ordinance No. 22 strike at the very core of the administration of justice. Offences of this nature will affect the wider interests of the

community at large particularly in the light of the exalted position occupied by the accused. In the circumstances the social status of the accused does not operate in his favour as the other grounds advanced by him have no merit. Accordingly I refused the application for bail on a consideration of all the matters before me. Thus the question of releasing the accused on bail with conditions attached does not arise. I then ordered that the accused be remanded. In hearing the application I guarded against forming, or the possibility of forming, any impression on the merits of the case.

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